

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SALMA MERRITT, ET AL,

No. C 13-01391 JSW

Plaintiff,

**ORDER DISMISSING WITH
PREJUDICE**

v.

(Re: Docket No. 70)

KEVIN E. MCKENNEY, ET AL,

Defendant.

On August 27, 2013, the Court granted Defendants' motion to dismiss. In that order, the Court also denied Plaintiffs' motion for leave to file a Second Amended Complaint which proposed to add claims against Georgia Ku and amended the claims against the Santa Clara County Superior Court. However, the Court gave Plaintiffs until September 27, 2013 to file a motion for leave to file a Third Amended Complaint. Instead of filing such a motion, on August 27, 2013, Plaintiffs filed a Notice of Appeal. Plaintiffs did not file a motion for leave to amend on September 27, 2013, and given the pendency of the appeal, the Court neither dismissed the case nor issued an Order to Show Cause to Plaintiffs regarding the failure to comply with that deadline.

On October 30, 2013, Plaintiffs filed a Motion for Certification of Appeal, which they noticed for hearing on November 15, 2013. The Court concludes that a response from Defendants is not required, and it finds this motion suitable for disposition on the papers, and it VACATES the hearing. *See* N.D. Civ. L.R. 7-1(b).

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1 The Court notes that Plaintiffs did not notice the hearing in accordance with Northern
2 District Civil Local Rule 7-2(a), which requires motions to be noticed for hearing not less than
3 35 days after service of the motion. Plaintiffs also did not file a motion to have the motion
4 heard on shortened time demonstrating why briefing on an expedited schedule was necessary.
5 Although the Court could deny the motion based on these procedural defects, the Court
6 concludes that to do so would not be in the interests of judicial efficiency or in the interests of
7 justice.

8 In their motion, Plaintiffs state that they seek relief, because the Ninth Circuit “recently
9 refused appeal because leave to amend was ordered and that no final judgment was entered.”
10 (Mot. at 1:24-25.) Indeed, on October 31, 2013, the Court received an Order from the Ninth
11 Circuit dismissing the appeal for lack of jurisdiction. (Docket No. 71.) Plaintiffs also state that
12 they seek entry of judgment on the basis that they have nothing further to add to the proposed
13 Second Amended Complaint. (See Mot. at 2:4-11, 4:4-8.) In sum, Plaintiffs ask this Court to
14 enter judgment, so that they may proceed to appeal. In light of Plaintiffs’ *pro se* status, the
15 Court shall construe Plaintiffs’ motion as a statement of their intent to stand on the allegations
16 in their Second Amended Complaint and a statement that they do not intend to seek leave to file
17 a Third Amended Complaint.

18 Accordingly, the Court HEREBY DISMISSES this case with prejudice for the reasons
19 set forth in its Order dated August 27, 2013, including its reasons for denying Plaintiffs leave to
20 file a Second Amended Complaint against Georgia Ku and the Santa Clara County Superior
21 Court. The Court shall enter a separate judgment, and the Clerk shall close this file.

22 **IT IS SO ORDERED.**

23 Dated: November 1, 2013

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25 JEFFREY S. WHITE
26 UNITED STATES DISTRICT JUDGE
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